



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben J. Dean
District Attorney
Breckenridge, Texas

Dear Sir:

Opinion No. 0-1680

Re: Is the contract for the lease of three pieces of road machinery for the total of \$4,450.00 payable in monthly installments with an option to purchase when the installments are paid at the aggregate price of the installments plus interest at six per cent from the date of payment, in violation of the statute requiring competitive bids and therefore void?

This will acknowledge receipt of your letter of March 12, 1940, requesting an opinion of this department on the above stated question, from which letter we quote.

** * *

"I have before me a contract proposed to be entered into by Stephens County, Texas, under the terms of which said county is to lease a tractor, scraper and roadbuilder for \$4,450.00, payable in thirty-four monthly installments, which contract provides that the county shall have an option to purchase said machinery upon the expiration of the lease for the amount which they have paid as rentals plus six per cent for deferred payments, although the county is not obligated to exercise the option.

"In other words, this option contract does obligate the county to pay in monthly installments the sum of \$4,450.00 regardless of whether the option is exercised and gives the county the right to take the machinery at the end of the contract period. Under the contract the county obligates itself to pay the entire purchase price of the machinery, but it is not called a purchase but a lease contract.

"The County Commissioner who is getting the machinery mentioned in the contract advises me that the salesman representing the machinery company informed him that this was a method of dealing without complying with the law requiring such contract to be advertised and submitted to competitive bids.

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Article 1659, Vernon's Annotated Civil Statutes, reads as follows:

"Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisements shall state where the specifications are to be found, and shall give the time and place for receiving such bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and re-advertise for new bids. In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids."

Under constitutional sanction, the Legislature has delegated to the counties of this state, acting through the commissioners' court, the power to lay out, construct, repair and maintain public roads. Article 3, Section 52, Article 11, Section 2, of the Constitution, Article 2351 and 1659, Vernon's Annotated Civil Statutes. However, as said in 11 Tex. Juris. at p.632:

"The authority of the commissioners' court as the governing body of the county to make

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contracts in its behalf is strictly limited to that conferred either expressly or by fair or necessary implication by the Constitution and the laws of the state." Childress County v. State, 92 S. W. 1011; Roper v. Hall, 280 S. W. 289 and Lassiter v. Lopez, 217 S. W. 373.

We are unable to find any authority empowering commissioners' court to lease or rent road machinery and equipment with the option to purchase.

In our Opinion No. 0-1685 it was stated that:

"The bid requirement of Article 1659, supra, is applicable to any purchase of road machinery or equipment by a county commissioners' court and cannot be avoided in any manner."

In our Opinion No. 0-1317 it was held that:

"We, therefore, respectfully advise that it is the opinion of this department that your first question should be answered in the negative; namely, that the commissioners' court cannot lease or rent, with the option to purchase, road machinery, pickups or trucks, warehouses for the storage of equipment. The question of advertising for bids, in such case, thereupon becomes immaterial."

We are enclosing herewith copies of the two above mentioned opinions and Opinion No. 0-1839, for your information and convenience.

The so-called lease is no more than a sale of the machinery to the county. Therefore, under the facts stated, the court is attempting to do indirectly what it is prohibited from doing directly; that is, to make a purchase without advertising for bids as required by law.

In view of the foregoing, you are respectfully advised that it is the opinion of this Department that the above mentioned contract is void.

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Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardall Williams*
Ardall Williams
Assistant

AW:jm

ENCLOSURE

APPROVED APR 1, 1940

George A. Dean
ATTORNEY GENERAL OF TEXAS

